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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,319	02/17/2006	Michel Drancourt	123296	8564
25944	7590	12/11/2007	EXAMINER	
OLIFF & BERRIDGE, PLC			THOMAS, DAVID C	
P.O. BOX 320850			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22320-4850			1637	
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			12/11/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/529,319	DRANCOURT ET AL.
	Examiner David C. Thomas	Art Unit 1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 September 2007.  
 2a) This action is FINAL.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4,6-12,15-18,20 and 21 is/are pending in the application.  
 4a) Of the above claim(s) 6-12,15-18,20 and 21 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 3/25/2005.

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application .  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of Group 1, claims 1-4, 6-12 and 19 and SEQ ID NOS: 1 and 8 in the reply filed on September 12, 2007 is acknowledged. Claims 5, 13, 14 and 19 have been canceled while claim 20, drawn to a method for detecting the presence of a bacterium, and claim 21, drawn to an isolated oligonucleotide, have been newly added. In addition, claims 6-12 and 21 are withdrawn since they are drawn to non-elected sequences. Therefore, claims 1-4 will be examined on the merits and claims 6-12, 15-18, 20 and 21 are withdrawn from further prosecution.

The traversal is on the grounds that the Examiner failed to establish a lack of unity of invention between the groups of claims designated as separate inventions. In particular, Applicant argues that mere identification of an X reference, as listed in the International Search Report, without explanation of the relevance of the reference or how it anticipates the claimed invention, is insufficient for establishing lack of unity. As noted in the search report, Kunsch et al. (cited as Dougherty et al. in the search report, U.S. Patent No. 6,420,135) is relevant to several of the product and method claims. Upon further search, this reference anticipates at least claim 4 of the elected product group, discussed in more detail below, and therefore this group does not make a contribution over the prior art.

The requirement is still deemed proper and is therefore made FINAL.

### *Claim Objections*

2. Claims 1-4 are objected to because of the following informalities:

Claims 1, 3 and 4 are objected to because they comprise limitations not required for examination of the claims based on the elected sequence. The elected SEQ ID NO: 8 contains no arbitrary bases. Claims 1-4 are objected to because the preamble refers to bacterial genera or species not associated with the elected sequence. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The preamble of claim 1 does not match the elected sequences, as it is confusing as to whether the sequence refers to an isolated *rpoB* gene or gene fragment of the elected sequence. Furthermore, the elected SEQ ID NO: 8 is defined in the specification as detecting the species *Streptococcus suis*, yet claims 1, 3 and 4 are drawn to an *rpoB* gene or gene fragment of any of four related genera. The elected SEQ ID NO: 1 of dependent claim 2 is different in scope than that of the independent claim 1 since SEQ ID NO: 1 represents an *rpoB* gene of *Streptococcus anginosus*, while SEQ ID NO: 8 represents a fragment of the *rpoB* gene of *Streptococcus suis*. Finally, the term "complementary sequences" in claims 1-4 is misleading as it is unclear whether these represent fully or partially complementary sequences.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Haselbeck et al. (U.S. Patent Pub. No. 20020061569).

With regard to claims 1 and 3, Haselbeck teaches an isolated *rpoB* gene fragment of the genus *Streptococcus* comprising:

(b) complementary sequences of an isolated *rpoB* gene or gene fragment comprising SEQ ID NO: 8 (positions 2278-2309 of SEQ ID NO: 9089 taught by Haselbeck representing sequences of *Streptococcus pneumoniae* are 100% homologous to positions 1-32 of SEQ ID NO: 8, a span of 32 consecutive nucleotides; in addition, positions 2548-2603 of SEQ ID NO: 9089 are 100% homologous to positions 271-326 of SEQ ID NO: 8, a span of 56 consecutive nucleotides; note: there are no arbitrary bases in SEQ ID NO: 8).

With regard to claim 4, Haselbeck teaches an isolated oligonucleotide comprising:

(a) a nucleic acid sequence specific to a bacterium of the genus *Streptococcus*, and comprising 20-100 consecutive nucleotides included in SEQ ID NO: 8 (positions 2278-2309 of SEQ ID NO: 9089 taught by Haselbeck representing sequences of *Streptococcus pneumoniae* are 100% homologous to positions 1-32 of SEQ ID NO: 8, a

span of 32 consecutive nucleotides; in addition, positions 2548-2603 of SEQ ID NO: 9089 are 100% homologous to positions 271-326 of SEQ ID NO: 8, a span of 56 consecutive nucleotides).

7. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kunsch et al. (U.S. Patent No. 6,420,135).

With regard to claims 1 and 3, Kunsch teaches an isolated *rpoB* gene fragment of the genus *Streptococcus* comprising:

(b) complementary sequences of an isolated *rpoB* gene or gene fragment comprising SEQ ID NO: 8 (positions 11613-11582 of SEQ ID NO: 111 taught by Kunsch representing sequences of *Streptococcus pneumoniae* are 100% homologous to positions 1-32 of SEQ ID NO: 8, a span of 32 consecutive nucleotides; in addition, positions 11343-11288 of SEQ ID NO: 111 are 100% homologous to positions 271-326 of SEQ ID NO: 8, a span of 56 consecutive nucleotides; note: there are no ambiguous bases in SEQ ID NO: 8).

With regard to claim 2, Kunsch teaches an isolated *rpoB* gene fragment of the genus *Streptococcus* comprising:

(b) complementary sequences of an isolated *rpoB* gene or gene fragment comprising SEQ ID NO: 1 (positions 10692-10658 of SEQ ID NO: 111 taught by Kunsch representing sequences of *Streptococcus pneumoniae* are 100% homologous to positions 3531-3565 of SEQ ID NO: 8, a span of 35 consecutive nucleotides; in

addition, positions 10395-10367 of SEQ ID NO: 111 are 100% homologous to positions 3789-3817 of SEQ ID NO: 1, a span of 29 consecutive nucleotides).

With regard to claim 4, Kunsch teaches an isolated oligonucleotide comprising:

(a) a nucleic acid sequence specific to a bacterium of the genus *Streptococcus*, and comprising 20-100 consecutive nucleotides included in SEQ ID NO: 8 (positions 11613-11582 of SEQ ID NO: 111 taught by Kunsch representing sequences of *Streptococcus pneumoniae* are 100% homologous to positions 1-32 of SEQ ID NO: 8, a span of 32 consecutive nucleotides; in addition, positions 11343-11288 of SEQ ID NO: 111 are 100% homologous to positions 271-326 of SEQ ID NO: 8, a span of 56 consecutive nucleotides).

### ***Conclusion***

8. Claims 1-4 are rejected. No claims are allowable.

### ***Correspondence***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Thomas whose telephone number is 571-272-3320 and whose fax number is 571-273-3320. The examiner can normally be reached on 5 days, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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